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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 000090

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TREASURY FOR CMORAVEC, SBLEIWEIS
COMMERCE FOR AKLEINER, SHAMROCK

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SUBJECT: DE FACTO NON-IMPLEMENTATION OF ARAB LEAGUE BOYCOTT
IN IRAQ

REF: A. BAGHDAD 0042

1B. 07 BAGHDAD 1944

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1D. 06 BAGHDAD 4690

Classified By: Charles P. Ries, Economic Minister, for reasons 1.4 (b)
and (d).

11. (C) SUMMARY: Embassy's quiet diplomacy on the issue of Iraq's implementation of the Arab League Boycott (ALB) has borne fruit. The Council of Ministers (CoM) has agreed to allow trademark applications submitted by PepsiCo to be registered, and the first five were officially registered on January 8, 2008. The Minister of Industry and Minerals, who championed the decision in the CoM on the grounds that ALB provisions hinder economic development, states that this decision to not implement ALB provisions should apply to other areas affected by ALB provisions handled under different ministries.

12. (C) From another angle, it has become apparent that Iraqi firms are free to sign contracts with Embassy that contain clauses certifying that the firm will not comply with ALB provisions, without fear that they will be prosecuted under current Iraqi law. Although current Iraqi law continues to contain ALB provisions, the GoI has taken a clear step in the trademark case in the direction of non-implementation, as have other League of Arab States members. This should have a positive impact on Iraq's ability to attract foreign direct investment. We suggest that the accumulation of de facto non-implementation practices warrants consideration of removal of Iraq from the Department of Treasury's anti-boycott list as a "country under review". END SUMMARY.

Trademarks, Patents,
Copyrights, Company
Registration

13. (C) PepsiCo's VP for International Government Affairs notified Embassy and USG agencies that the company's five most important trademark applications in Iraq were officially registered on January 8, 2008. NOTE: PepsiCo has suggested, and we agree, that publicity of this fact is not appropriate, in part to allow the company space within which to prepare future action against product counterfeiters. END NOTE. She said that other applications, presented through a different agent, would soon be registered as well. This is the end of a process by which the applications are submitted, and if found to be in proper form, are gazetted and subject to a 60-day notification and objection period. In the absence of objections, the official date of registration was the end of the 60-day period for the first five applications.

¶4. (C) This is the culmination of nearly three years of quiet diplomacy on behalf of U.S. businesses seeking trademark protection in Iraq. It is the result of the decision of the Minister of Industry and Minerals, Fawzi Hariri, to champion a practice of non-implementation of the ALB provisions that exist in Iraqi law. As in many League of Arab States member countries, it would be politically difficult for the GoI to publicly renounce the ALB, but it appears that the GoI is ready to establish a practice of non-implementation. In a meeting with EMIN on January 9, Hariri stressed that his winning argument was that ALB implementation acts as an unacceptable break to foreign investment in Iraq, and unnecessarily hampered the country's economic recovery and development. He noted that while the PepsiCo trademark applications are handled by the Trademark office within his ministry, he had obtained the cooperation of the entire Council of Ministers on the question. He said that this would affect other areas where

ALB provisions impact on investors and businesses. We presume this means that applications for copyright protection in the Ministry of Culture, patent protection in the Ministry of Planning, and company registration applications in the Ministry of Trade, should now all receive the same treatment.

Firms Free To Do
Business with the USG

¶5. (C) Reftel A reported that, although Embassy felt it wise to request a waiver of the provisions Section 565 of Title V, Part C of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (PL 103-236, 22 CFR 2679c) to ensure our ability to carry on diplomatic functions, in practice over

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the previous year it had become apparent that Iraqi firms with which we had contracted did not seem constrained by ALB provision in Iraqi law. In all cases, firms had willingly signed contracts containing clauses certifying that the firm would not comply with ALB provisions. We believe this to be anecdotal evidence of another area in which the GoI has determined that implementation of ALB provisions is not in the country's national interest.

COMMENT

¶6. (C) Post believes PepsiCo's news warrants quiet celebration of significant progress made. The anecdotal evidence of non-implementation against Iraqi firms should also be taken as evidence of progress. This pattern of non-implementation, and the CoM's response to Minister Hariri's economically-based arguments, seems to show that the GoI "gets it".

¶7. (C) As we have urged in the past, we believe that generating public attention to these decisions for non-implementation is likely to undercut the CoM, and may push individual ministers to make public statements in support of the ALB. We will seek opportunities to applaud the CoM's decision in private; determine whether our experience in contracting indicates another instance of implicit non-implementation; and encourage an explicit if private statement from instances of authority that the GoI has determined to make this a de facto, if not de jure, policy. Given the positive evidence, we suggest that it is time to consider removing Iraq from the Department of Treasury's anti-boycott list as a country "under review".

END COMMENT.

CROCKER